

# SENATE BILL No. 357

## DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 20-5-2-8; IC 31-19-9-10; IC 31-34-21-5.6; IC 35-46-1-4.

**Synopsis:** Neglect of a dependent. Makes it a Class A felony to commit certain acts of neglect against a dependent that result in the death of the dependent. Makes conforming changes.

**Effective:** July 1, 2003.

**Kenley**

January 16, 2003, read first time and referred to Committee on Criminal, Civil and Public Policy.

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First Regular Session 113th General Assembly (2003)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2002 Regular or Special Session of the General Assembly.

## SENATE BILL No. 357

A BILL FOR AN ACT to amend the Indiana Code concerning criminal law and procedure.

*Be it enacted by the General Assembly of the State of Indiana:*

1       SECTION 1. IC 20-5-2-8, AS AMENDED BY P.L.123-2002,  
2       SECTION 24, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
3       JULY 1, 2003]: Sec. 8. (a) This section applies to:

4               (1) a school corporation; and

5               (2) an entity:

6                     (A) with which the school corporation contracts for services;

7                     and

8                     (B) that has employees who are likely to have direct, ongoing

9                     contact with children within the scope of the employees'

10                    employment.

11       (b) A school corporation or entity may use information obtained  
12       under section 7 of this chapter concerning an individual's conviction for  
13       one (1) of the following offenses as grounds to not employ or contract  
14       with the individual:

15               (1) Murder (IC 35-42-1-1).

16               (2) Causing suicide (IC 35-42-1-2).

17               (3) Assisting suicide (IC 35-42-1-2.5).



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- 1 (4) Voluntary manslaughter (IC 35-42-1-3).
- 2 (5) Reckless homicide (IC 35-42-1-5).
- 3 (6) Battery (IC 35-42-2-1) unless ten (10) years have elapsed from
- 4 the date the individual was discharged from probation,
- 5 imprisonment, or parole, whichever is later.
- 6 (7) Aggravated battery (IC 35-42-2-1.5).
- 7 (8) Kidnapping (IC 35-42-3-2).
- 8 (9) Criminal confinement (IC 35-42-3-3).
- 9 (10) A sex offense under IC 35-42-4.
- 10 (11) Carjacking (IC 35-42-5-2).
- 11 (12) Arson (IC 35-43-1-1) unless ten (10) years have elapsed from
- 12 the date the individual was discharged from probation,
- 13 imprisonment, or parole, whichever is later.
- 14 (13) Incest (IC 35-46-1-3).
- 15 (14) Neglect of a dependent as a **Class A felony or Class B**
- 16 **felony (IC 35-46-1-4(b)(4) or IC 35-46-1-4(b)(2))** unless ten (10)
- 17 years have elapsed from the date the individual was discharged
- 18 from probation, imprisonment, or parole, whichever is later.
- 19 (15) Child selling (IC 35-46-1-4(d)).
- 20 (16) Contributing to the delinquency of a minor (IC 35-46-1-8)
- 21 unless ten (10) years have elapsed from the date the individual
- 22 was discharged from probation, imprisonment, or parole,
- 23 whichever is later.
- 24 (17) An offense involving a weapon under IC 35-47 or IC 35-47.5
- 25 unless ten (10) years have elapsed from the date the individual
- 26 was discharged from probation, imprisonment, or parole,
- 27 whichever is later.
- 28 (18) An offense relating to controlled substances under
- 29 IC 35-48-4 unless ten (10) years have elapsed from the date the
- 30 individual was discharged from probation, imprisonment, or
- 31 parole, whichever is later.
- 32 (19) An offense relating to material or a performance that is
- 33 harmful to minors or obscene under IC 35-49-3 unless ten (10)
- 34 years have elapsed from the date the individual was discharged
- 35 from probation, imprisonment, or parole, whichever is later.
- 36 (20) An offense relating to operating a motor vehicle while
- 37 intoxicated under IC 9-30-5 unless five (5) years have elapsed
- 38 from the date the individual was discharged from probation,
- 39 imprisonment, or parole, whichever is later.
- 40 (21) An offense that is substantially equivalent to any of the
- 41 offenses listed in this subsection in which the judgment of
- 42 conviction was entered under the law of any other jurisdiction.

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(c) An individual employed by a school corporation or an entity described in subsection (a) shall notify the governing body of the school corporation if during the course of the individual's employment the individual is convicted in Indiana or another jurisdiction of an offense described in subsection (b).

SECTION 2. IC 31-19-9-10, AS AMENDED BY P.L.222-2001, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 10. A court shall determine that consent to adoption is not required from a parent if:

(1) the parent is convicted of and incarcerated at the time of the filing of a petition for adoption for:

- (A) murder (IC 35-42-1-1);
- (B) causing suicide (IC 35-42-1-2);
- (C) voluntary manslaughter (IC 35-42-1-3);
- (D) rape (IC 35-42-4-1);
- (E) criminal deviate conduct (IC 35-42-4-2);
- (F) child molesting as a Class A **felony** or Class B felony (IC 35-42-4-3);
- (G) incest as a Class B felony (IC 35-46-1-3);
- (H) neglect of a dependent as a Class A **felony** or Class B felony (IC 35-46-1-4);
- (I) battery of a child as a Class C felony (IC 35-42-2-1(a)(3));
- (J) battery as a Class A felony (IC 35-42-2-1(a)(5)) or Class B felony (IC 35-42-2-1(a)(4)); or
- (K) an attempt under IC 35-41-5-1 to commit an offense described in clauses (A) through (J);

(2) the child or the child's sibling, half-blood sibling, or step-sibling of the parent's current marriage is the victim of the offense; and

(3) after notice to the parent and a hearing, the court determines that dispensing with the parent's consent to adoption is in the child's best interests.

SECTION 3. IC 31-34-21-5.6, AS AMENDED BY P.L.217-2001, SECTION 10, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 5.6. (a) A court may make a finding described in this section at any phase of a child in need of services proceeding.

(b) Reasonable efforts to reunify a child with the child's parent, guardian, or custodian or preserve a child's family as described in section 5.5 of this chapter are not required if the court finds any of the following:

(1) A parent, guardian, or custodian of a child who is a child in need of services has been convicted of:

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- 1 (A) an offense described in IC 31-35-3-4(1)(B) or  
 2 IC 31-35-3-4(1)(D) through IC 31-35-3-4(1)(J) against a  
 3 victim who is:  
 4 (i) a child described in IC 31-35-3-4(2); or  
 5 (ii) a parent of the child; or  
 6 (B) a comparable offense as described in clause (A) in any  
 7 other state, territory, or country by a court of competent  
 8 jurisdiction.
- 9 (2) A parent, guardian, or custodian of a child who is a child in  
 10 need of services:  
 11 (A) has been convicted of:  
 12 (i) the murder (IC 35-42-1-1) or voluntary manslaughter (IC  
 13 35-42-1-3) of a victim who is a child described in  
 14 IC 31-35-3-4(2)(B) or a parent of the child; or  
 15 (ii) a comparable offense described in item (i) in any other  
 16 state, territory, or country; or  
 17 (B) has been convicted of:  
 18 (i) aiding, inducing, or causing another person;  
 19 (ii) attempting; or  
 20 (iii) conspiring with another person;  
 21 to commit an offense described in clause (A).
- 22 (3) A parent, guardian, or custodian of a child who is a child in  
 23 need of services has been convicted of:  
 24 (A) battery (IC 35-42-2-1(a)(5)) as a Class A felony;  
 25 (B) battery (IC 35-42-2-1 (a)(4)) as a Class B felony;  
 26 (C) battery (IC 35-42-2-1(a)(3)) as a Class C felony;  
 27 (D) aggravated battery (IC 35-42-2-1.5);  
 28 (E) criminal recklessness (IC 35-42-2-2(c)) as a Class C  
 29 felony;  
 30 (F) neglect of a dependent (IC 35-46-1-4) as a Class **A felony**  
 31 **or Class B** felony; or  
 32 (G) a comparable offense described in clauses (A) through (F)  
 33 in another state, territory, or country;  
 34 against a child described in IC 31-35-3-4(2)(B).
- 35 (4) The parental rights of a parent with respect to a biological or  
 36 adoptive sibling of a child who is a child in need of services have  
 37 been involuntarily terminated by a court under:  
 38 (A) IC 31-35-2 (involuntary termination involving a  
 39 delinquent child or a child in need of services);  
 40 (B) IC 31-35-3 (involuntary termination involving an  
 41 individual convicted of a criminal offense); or  
 42 (C) any comparable law described in clause (A) or (B) in any

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other state, territory, or country.

(5) The child is an abandoned infant, provided that the court:

(A) has appointed a guardian ad litem or court appointed special advocate for the child; and

(B) after receiving a written report and recommendation from the guardian ad litem or court appointed special advocate, and after a hearing, finds that reasonable efforts to locate the child's parents or reunify the child's family would not be in the best interests of the child.

SECTION 4. IC 35-46-1-4, AS AMENDED BY P.L.133-2000, SECTION 10, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 4. (a) A person having the care of a dependent, whether assumed voluntarily or because of a legal obligation, who knowingly or intentionally:

(1) places the dependent in a situation that endangers the dependent's life or health;

(2) abandons or cruelly confines the dependent;

(3) deprives the dependent of necessary support; or

(4) deprives the dependent of education as required by law;

commits neglect of a dependent, a Class D felony.

(b) However, the offense is:

(1) a Class C felony if it is committed under subsection (a)(1), (a)(2), or (a)(3) and results in bodily injury;

(2) a Class B felony if it is committed under subsection (a)(1), (a)(2), or (a)(3) and results in serious bodily injury; ~~and~~

(3) a Class C felony if it is committed under subsection (a)(2) and consists of cruel or unusual confinement or abandonment; ~~and~~

**(4) a Class A felony if it is committed under subsection (a)(1), (a)(2), or (a)(3) and results in the death of a dependent.**

(c) It is a defense to a prosecution based on an alleged act under this section that:

(1) the accused person left a dependent child who was, at the time the alleged act occurred, not more than thirty (30) days of age with an emergency medical provider who took custody of the child under IC 31-34-2.5 when:

(A) the prosecution is based solely on the alleged act of leaving the child with the emergency medical services provider; and

(B) the alleged act did not result in bodily injury or serious bodily injury to the child; or

(2) the accused person, in the legitimate practice of his religious belief, provided treatment by spiritual means through prayer, in

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lieu of medical care, to his dependent.

(d) Except for property transferred or received:

(1) under a court order made in connection with a proceeding under IC 31-15, IC 31-16, IC 31-17, or IC 31-35 (or IC 31-1-11.5 or IC 31-6-5 before their repeal); or

(2) under IC 35-46-1-9(b);

a person who transfers or receives any property in consideration for the termination of the care, custody, or control of a person's dependent child commits child selling, a Class D felony.

SECTION 5. [EFFECTIVE JULY 1, 2003] **IC 35-46-1-4, as amended by this act, applies only to offenses committed after June 30, 2003.**

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